

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

UMAR PARACHA,

Plaintiff,

v.

CITY OF WISCONSIN DELLS,
ERIC HELLAND,
BRET ANDERSON,
MICHAEL HORKAN, and
BRIAN LANDERS,

Defendants.

ORDER

14-cv-524-jdp

Defendants moved for summary judgment on all of plaintiff Umar Paracha's claims in this case. Their opening brief contended that Paracha lacked standing to assert his claims and, in the alternative, that Paracha's claims were barred by judicial estoppel and res judicata. Dkt. 25. But Paracha did not address either point in his response brief, discussing instead his own view of the merits of the case. Dkt. 34. Nor did Paracha respond to the court's order that he identify a "contractual relationship" that defendants impaired—an essential element of a claim under 42 U.S.C. § 1981. *See* Dkt. 31. Defendants have now filed a reply brief reasserting their opening arguments, but also contending that § 1981 does not create a private right of action against state actors. Dkt. 38.

The parties' disjointed summary judgment presentations are not ideal, particularly defendants' late-breaking grounds for summary judgment. Arguments raised for the first time in a reply brief are generally waived. *Darif v. Holder*, 739 F.3d 329, 336 (7th Cir. 2014). But the court will excuse defendants' procedural faux pas in this case because the issue goes to a fundamental element of Paracha's claim. As a matter of fairness, however, Paracha may file a

short sur-reply addressing *only* the issue of whether his claims are barred because § 1981 does not create a private right of action against state actors. *See Campbell v. Forest Pres. Dist. of Cook Cty.*, 752 F.3d 665, 671 (7th Cir. 2014), *cert. denied sub nom., Campbell v. Forest Pres. Dist. of Cook Cty.*, 135 S. Ct. 947 (2015).

ORDER

IT IS ORDERED that plaintiff Umar Paracha may file a sur-reply in opposition to defendants' motion for summary judgment. The brief is due December 11, 2015, and is strictly limited to discussing the issue identified in this order.

Entered December 1, 2015.

BY THE COURT:

/s/

JAMES D. PETERSON
District Judge